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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

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9 MARK LINGENFELTER,

10 Plaintiff,

11 v.

12 CAROLYN COLVIN, Acting Commissioner  
of Social Security,

13 Defendant.

Case No. 3:14-cv-00202-MMD-VPC

14 ORDER ACCEPTING REPORT AND  
RECOMMENDATION OF MAGISTRATE  
JUDGE VALERIE P. COOKE

15 Before the Court is Magistrate Judge Valerie P. Cooke's Report and  
16 Recommendation ("R&R") (dkt. no. 17), regarding Plaintiff Mark Lingenfelter's motion for  
17 reversal or remand (dkt. no. 18) and Defendant Carolyn Colvin's cross-motion to affirm  
18 and opposition (dkt. nos. 13, 14), and plaintiff's opposition and reply (dkt. nos. 15, 16).  
19 Judge Cooke entered the R&R on February 2, 2015. The parties had until February 19,  
20 2015, to file any objections. No objections were filed.

21 This Court "may accept, reject, or modify, in whole or in part, the findings or  
22 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party  
23 timely objects to a magistrate judge's report and recommendation, then the court is  
24 required to "make a *de novo* determination of those portions of the [report and  
25 recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails  
26 to object, however, the court is not required to conduct "any review at all . . . of any issue  
27 that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985).  
28 Indeed, the Ninth Circuit has recognized that a district court is not required to review a

1 magistrate judge's report and recommendation where no objections have been filed. See  
2 *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard  
3 of review employed by the district court when reviewing a report and recommendation to  
4 which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,  
5 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the  
6 view that district courts are not required to review "any issue that is not the subject of an  
7 objection"). Thus, if there is no objection to a magistrate judge's recommendation, then  
8 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.  
9 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to  
10 which no objection was filed).

11 Nevertheless, this Court finds it appropriate to engage in a *de novo* review in  
12 order to determine whether to adopt the R&R. The R&R finds substantial evidence in the  
13 record does not support the ALJ's determination of nondisability. The R&R also finds that  
14 the ALJ erred with respect to her evaluation of plaintiff's past relevant work, her  
15 conclusion that plaintiff has transferable customer service skills, and her rejection of  
16 Cestkowski's postural limitations findings. Because the errors are not harmless, and  
17 because further proceedings can rectify these errors, the R&R concludes that remand is  
18 appropriate. Upon review of the R&R and the records in this case, the Court finds good  
19 cause to adopt the R&R in full.

20 It is hereby ordered that the R&R (dkt. no. 17) is accepted and adopted. Plaintiff's  
21 motion to remand (dkt. no. 12) is granted and defendant's cross-motion to affirm (dkt. no.  
22 13) is denied.

23 It is further ordered that the case is remanded to the ALJ for further administrative  
24 proceedings.

25 DATED THIS 11<sup>th</sup> day of May 2015.



26  
27 MIRANDA M. DU  
28 UNITED STATES DISTRICT JUDGE